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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1975

No. 75-923

CONSTRUCTION INDUSTRY ASSOCIATION OF SONOMA COUNTY, a California non-profit corporation, THE SAN FRANCISCO, PENINSULA AND REDWOOD EMPIRE BUILDING INDUSTRY ASSOCIATION, a California non-profit corporation, PETALUMA PARTNERS, a California limited partnership, and WILLIAM LAWRENCE,
Petitioners,

vs.

THE CITY OF PETALUMA, a California Charter City, HELEN PUTNAM, ROBERT A. BRUNNER, JOHN W. CAVANAGH, ROBERT E. DALY, JAMES L. HARBERSON, FRED V. MATTEI, and WILLIAM A. PERRY,
Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit

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Construction Industry Association of Sonoma County, a California non-profit corporation, The San Francisco, Peninsula and Redwood Empire Building Industry Association, a California non-profit corporation, Petaluma Partners, a California limited partnership, and William Lawrence,
Petitioners,

vs.

The City of Petaluma, a California Charter City, Helen Putnam, Robert A. Brunner, John W. Cavanagh, Robert E. Daly, James L. Harberson, Fred V. Mattei, and William A. Perry,
Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit

STATEMENT OF THE CASE

This case involves the validity of land use regulations of the City of Petaluma, California. These land use regulations, which were adopted by the City Council in 1971 and 1972, have been collectively referred to throughout

this litigation as the Petaluma Plan or the Plan and will be so referred to herein. Some of the purposes and policies of the Plan are stated in the portions of the Plan which are set forth in the Appendix to this Brief.

In early 1971, the City of Petaluma adopted a temporary freeze on development. The freeze was designed to give the City an opportunity to evaluate development trends, ascertain the needs and desires of its citizens, and develop a coordinated response to a broad range of pressing municipal concerns, including the inadequacy of public facilities (principally water supply and sewage treatment facilities) to serve a rapidly increasing population, the adverse environmental impact of urban sprawl and of expanded residential construction, the imbalance between single-family and multi-family residential units, the concentration of growth in the form of grid-type subdivisions in the eastern section of the City, and adverse effect of these trends upon the City's tax base.

Shortly after the imposition of the freeze, the City established a special Development Policy Advisory Committee. With the aid of a firm of independent planning consultants, this Committee prepared a Development Policy which was reviewed and recommended favorably by the city planning commission. The city council adopted the Development Policy in June, 1971. (Plaintiffs' Exhibit No. 1-5, Pages 29-36)

After extensive public hearings and full expression of views by all segments of the community, including property owners and developers, the City Council adopted Environmental Design Plans in March, 1972 (Plaintiffs' Exhibit No. 1-5, Page 37), stated the City's Policy with

Respect to Residential Construction and Population Growth in April, 1972 (Plaintiffs' Exhibit No. 1-5, Pages 38-40), adopted the Residential Development Control System in August, 1972 (Plaintiffs' Exhibit No. 1-7), and adopted the Housing Element of the General Plan in September, 1972. (Plaintiffs' Exhibit No. 1-8)

These five elements, collectively referred to as the Plan, constitute an interim land use regulation in effect for a period of five years ending in 1977. The Plan provides for orderly, manageable and reasonable growth both within and without the City during its five year duration. The Plan as adopted and in effect is the sole matter before the court, not some other or different regulation or plan about which there may be speculation. It is a growth plan, not a no-growth plan.

The Plan provides that residential development which is subject to the Plan shall be limited to about 500 residential units per year, or a total of 2,500 for the five year period. *Residential developments of four dwelling units or less are excepted from the Plan, and do not count against the stated numerical limit.* Development in Petaluma at the rate of 500 dwelling units per year represents a growth rate of approximately six percent (6%) each year, even without taking into account the developments of four units or less; the growth rate in the entire San Francisco Bay area, in contrast, is approximately one and one-half percent (1½%) per year.

The Plan provides a system of allocation of the permitted number of dwelling units among applicants engaged in the business of residential development. An allocation board makes a preliminary determination upon the basis

of several criteria enumerated in the Plan, and the final allocation determination is made by the City Council. The allocation procedure is spelled out in detail and includes provisions for hearings and appeals.

Allocations are divided between sections of the City and between single-family dwellings and multiple residential units. Specific provision is made for low and moderate income housing: the Council may require that 8-12% of the dwelling units each year shall be in this category, and low and moderate income housing is established as one of the criteria for which allocation points are given. If all of the allocations for one year are not made, there are provisions for carryover of the unused allocations to following years.

This case clearly does not involve racial discrimination, economic status discrimination or discrimination between residents and non-residents. In short, it does not involve discrimination in any manner, shape or form. This non-discriminatory feature of the Plan was clearly recognized by the Court of Appeals:

> "Although appellees have attempted to align their business interests in attacking the Plan with legitimate housing needs of the urban poor and racial minorities, the Association has not alleged nor can it allege, based on the record in this case, that the Plan has the purpose and effect of excluding poor persons and racial minorities. Cf. *Board of County Supervisors of Fairfax County v. Carper,* 200 Va. 653, 107 S.E. 2d 390 (1959). Contrary to the picture painted by appellees, the Petaluma Plan is 'inclusionary' to the extent that it offers new opportunities, previously unavailable, to minorities and low and moderate-income persons. Under the pre-Plan system

> single family, middle-income housing dominated the Petaluma market, and as a result low and moderate income persons were unable to secure housing in the area. The Plan radically changes the previous building pattern and requires that housing permits be evenly divided between single family and multi-family units and that approximately eight to twelve per cent of the units be constructed specifically for low and moderate income persons."

(Petition, App. B, at 55 n. 16)

The District Court adjudged the Plan to be invalid solely on the ground that it violated the constitutional right to travel. The City secured from Mr. Justice Douglas a stay of the District Court's judgment pending appeal.

In its appeal the City was supported by the following amici:

The Attorney General of the State of California;
Natural Resources Defense Counsel, Inc. and Sierra Club;
Joint Center for Urban Studies of the Massachuetts Institute of Technology and Harvard University;
Environmental Defense Fund;
The County of Marin, California;
The City of Los Angeles;
The following California cities:
Walnut Creek, Burbank, Corona, Norco, Pasadena, San Diego, Livermore, Pleasanton, Lafayette, Pleasant Hill, Vallejo, Hayward, Richmond, Mountain View, San Jose, Chico, Sacramento, Santa Ana, Thousand Oaks, Davis, Concord, Benicia, Fullerton, Riverside, Irvine, Yorba Linda, Palo Alto, San Juan Capistrano, McFarland and Tehachapi.

The Court of Appeals, in unanimously reversing the judgment of the District Court, determined that the Peti-

tioners did not have standing to raise the issue of right to travel, and that the Plan did not violate the due process or commerce clauses and was therefore valid and constitutional.

ARGUMENT

I.

PETITIONERS HAVE NO STANDING TO ASSERT THE RIGHT TO TRAVEL

Petitioners are two trade associations whose members are real estate developers and homebuilders, one owner of property outside the City of Petaluma, and an owner of property substantially all of which is outside the City of Petaluma. Thus all of the petitioners are persons or entities engaged in or interested in land development. Without alleging or establishing any representative or derivative capacity, petitioners seek to represent unnamed and unnamedable persons whose right to travel is allegedly being infringed by the Plan. These people are allegedly being frustrated in their efforts to move from points unknown to Petaluma. It is evident that the primary concern of petitioners, however, is really an alleged "right" to build residential units wherever and whenever they choose, regardless of local land use regulations. Petitioners seek to advance their economic interests by masquerading under the attempted assertion of a right to travel on behalf of a group to which petitioners bear no demonstrable connection. None of the petitioners is in the category of persons who may claim a right to migrate and settle as part of the right to travel, nor have they established the kind of relationship to such persons that would permit them to assume representation of the interests of such persons. Petitioners thus have no standing to raise the right to travel issue.

This Court's recent decision in *Warth v. Seldin,* 45 L.Ed.2d 343 (June 25, 1975) is fully dispositive of the standing issue. In that case an attack was made by a group of low-income and minority-group plaintiffs on the validity of the zoning regulations of the incorporated municipality of Penfield, a suburb of Rochester, New York, it being contended that the zoning regulations effectively prevented minority and low and moderate income people from living in the town. A home builders association comprised of firms engaged in residential construction in the Rochester area, including Penfield, sought to intervene. An organization known as the Housing Council, made up of members interested in housing problems, petitioned to be joined as a party plaintiff. It was alleged that one of the members of the Housing Council, Penfield Better Homes Corporation, "is and has been actively attempting to develop moderate income housing" in Penfield "but has been stymied by its inability to secure the necessary approvals." Standing was denied to the low-income and minority-group plaintiffs, and on the same ground of lack of standing the petition of the homebuilders association to intervene was denied and the Housing Council was refused permission to be joined as a party plaintiff.

In the Petaluma case, the Court of Appeals for the Ninth Circuit denied standing to petitioners to raise the right to travel issue on the direct authority of *Warth,* using the following language:

"A corollary to the 'zone of interest' requirement is the well-recognized general rule that 'even when the plaintiff has alleged injury sufficient to meet the "case or controversy" requirement, . . . the plaintiff must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties.' *Warth v. Seldin,* ____ U.S. ____, ____, slip op. at 8 (1975); accord, *United States v. Raines,* 362 U.S. 17, 21 (1960); *Barrows v. Jackson,* 346 U.S. 249, 256 (1953).

". . . their economic interests are undisputedly outside the zone of interest to be protected by any purported constitutional right to travel. Accordingly, appellees' right to travel claim 'falls squarely within the prudential standing rule that normally bars litigants from asserting the rights or legal interests of others in order to obtain relief from injury to themselves.' *Warth v. Seldin,* U.S. at ____, slip op. at 18."

(Petition, App. B, at 44-46)

In short, the Court of Appeals gave careful and detailed consideration to the issue of petitioners' standing to raise a right to travel claim, and correctly applied the prior decisions of this Court in concluding that petitioners lacked standing. The instant case presents no new considerations which might warrant review by the Court.

II.

IN ANY EVENT, THE RIGHT TO TRAVEL HAS NO APPLICATION TO LAND USE REGULATIONS WHICH GIVE EQUAL TREATMENT TO RESIDENTS AND NON-RESIDENTS ALIKE.

The Plan, as described above, provides a fair and reasonable system designed to ensure that new housing in the Petaluma area will be constructed and located in an orderly and rational manner, thereby promoting and protecting the health, safety and well being of the citizenry. The Plan's regulations and policies apply equally to all and in no way singles out only those who have traveled. Yet, in every case in which the Supreme Court has found a violation of the right to travel, the challenged regulation has on its face singled out for disadvantageous treatment only those who have traveled. In the *Passenger Cases,* 48 U.S. (7 How.) 300, 12 L.Ed. 702 (1849), the statutes in question imposed a tax on alien passengers landing at state ports. In *Crandall v. Nevada,* 73 U.S. (6 Wall.) 35, 18 L.Ed. 745 (1868), the Court struck down a tax of one dollar a head imposed on the exit of persons from the State of Nevada. In *Edwards v. California,* 314 U.S. 160, 86 L.Ed. 119 (1941), the challenged statute prohibited the introduction of indigent persons into the State of California. And more recently, in *Shapiro v. Thompson,* 394 U.S. 618, 22 L.Ed.2d 600 (1969), *Dunn v. Blumstein,* 405 U.S. 330, 31 L.Ed.2d 274 (1972), and *Memorial Hospital v. Maricopa County,* 415 U.S. 250, 39 L.Ed.2d 306 (1974), residency requirements barring new residents from receiving welfare, from voting, and from receiving free medical services, were invalidated.

Thus, while many local and state regulations, including those governing land use, may have an indirect impact on

the right to travel in the sense that the restriction of such regulations may cause some to believe that the city or state imposing the regulations is a less desirable place to live, there is no violation of the right to travel unless the regulations are more restrictive for new residents. This point was recognized by the Court of Appeals in its decision in this case:

> "The plaintiffs in *Belle Terre* claimed *inter alia* that the ordinance interfered with a person's right to travel and right to migrate to and settle within a state.
>
> The Supreme Court held that since the ordinance was not aimed at transients, there was no infringement of anyone's right to travel. 416 U.S. at 7. Although due to appellees' lack of standing we do not reach today the right to travel issue, we note that the Petaluma Plan is not aimed at transients, nor does it penalize those who have recently exercised their right to travel. See *CEEED v. California Coastal Zone Conservation Comm'n,* 43 Cal.App.3d 306, 118 Cal. Rptr. 315, 332-334 (1974); cf. *Dunn v. Blumstein,* 405 U.S. 330, 342 (1972)."

(Petition, App. B, at 52-53 n.13).

The Petaluma Plan does not single out newcomers for special and disadvantageous treatment; both newcomers and persons residing in Petaluma who are seeking new housing have equal access to the available housing on the market. Like virtually all land use regulation, the Petaluma Plan's indirect effect on the production and cost of housing is felt equally by all, regardless of whether one is migrating from New York to Petaluma, or only moving around the corner in search of a larger home for a growing family.

The error inherent in the expansion of the right to travel into the area of land use regulation, as urged by petitioners, was underscored by this Court's flat rejection of such an expansion last term in *Village of Belle Terre v. Boraas,* 416 U.S. 1 (1974). There a New York village ordinance which restricted land use to one family dwellings, excluding lodging, boarding, fraternity or multiple dwelling houses, and defined the word "family" to mean one or more persons related by blood, adoption, or marriage, or not more than two unrelated persons, living and cooking together as a single housekeeping unit, was challenged as violating, *inter alia,* the right to travel. The Court dismissed this assertion quickly, holding that the ordinance *"involves no 'fundamental' right guaranteed by the Constitution.* . . . We deal with economic and social legislation where legislatures have historically drawn lines which we respect against the charge of violation of the Equal Protection Clause if the law be 'reasonable, not arbitrary' and bear 'a rational relationship to a (permissible) state objective.'" *Belle Terre,* supra, 416 U.S. at 7-8 (emphasis added) (citations omitted).

Moreover, Mr. Justice Marshall, while dissenting on the grounds that the ordinance burdened the exercise of First Amendments rights, concurred in this Court's express holding that there existed a broadly defined zoning power wholly free from limitations imposed by the right to travel:

> "I would also agree with the majority that local zoning authorities may properly act in furtherance of the objectives asserted to be served by the ordinance at issue here: *restricting uncontrolled growth,* solving traffic problems, keeping rental costs at a reasonable

level, and making the community attractive to families."

416 U.S. at 13 (emphasis added)

III.

THE DECISION OF THE COURT OF APPEALS IS IN STRICT ACCORD WITH ALL EXISTING AUTHORITY

In this case the Court of Appeals carefully applied the test by which the validity of land use regulations has been measured since *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926)—whether the regulations are a reasonable exercise of the police power. The court stated:

> "It is well settled that zoning regulations 'must find their justification in some aspect of the police power, asserted for the public welfare.' *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 387 (1926). The concept of the public welfare, however, is not limited to the regulation of noxious activities or dangerous structures. As the Court stated in *Berman v. Parker*, 348 U.S. 26, 33 (1954):
>
> > The concept of the public welfare is broad and inclusive. The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled.
>
> (citations omitted). *Accord, Village of Belle Terre v. Boraas*, 416 U.S. 1, 6, 9 (1974).
>
> "In determining whether the City's interest in preserving its small town character and in avoiding uncontrolled and rapid growth falls within the broad concept of 'public welfare', we are considerably assisted by two recent cases. *Belle Terre*, supra, and *Ybarra v. City of Town of Los Altos Hills*, 503 F.2d 250 (9th Cir. 1974), each of which upheld as not unreasonable a zoning regulation much more restrictive than the Petaluma Plan, are dispositive of the due process issue in this case."

(Petition, App. B, at 51-52)

The court then discussed at length the holdings in *Belle Terre* and *Los Altos Hills*:

> "Both the Belle Terre ordinance and the Los Altos Hills regulation had the purpose and effect of permanently restricting growth; nonetheless, the court in each case upheld the particular law before it on the ground that the regulation served a legitimate governmental interest falling within the concept of the public welfare: the preservation of quiet family neighborhoods (Belle Terre) and the preservation of a rural environment (Los Altos Hills). Even less restrictive or exclusionary than the above zoning ordinances is the Petaluma Plan which, unlike those ordinances, does not freeze the population at present or near-present levels. Further, unlike the Los Altos Hills ordinance and the various zoning regulations struck down by state courts in recent years, the Petaluma Plan does not have the undesirable effect of walling out any particular income class nor any racial minority group."
>
> "We conclude therefore that under *Belle Terre* and *Los Altos Hills* the concept of the public welfare is sufficiently broad to uphold Petaluma's desire to preserve its small town character, its open spaces and low density of population, and to grow at an orderly and deliberate pace."

(Petition, App. B, at 54-55, 57)

Petitioners contend that the Petaluma Plan is an "admittedly exclusionary land-use ordinance." Nothing of the sort has even been admitted. In fact, as pointed out above, the Court of Appeals characterized the Plan as "inclusionary" rather than exclusionary. The Court of Appeals properly recognized that "Practically all zoning restrictions have as a purpose and effect the *exclusion* of some activity or structure or a certain density of inhabitants." (Page 51) Petitioners apparently have seized upon this statement of a universally recognized characteristic of zoning regulations in their attempt to liken the Petaluma Plan to those local land-use regulations that have been invalidated by the highest state courts of Pennsylvania and New Jersey on the ground that they were "exclusionary". Petitioners clearly misunderstand not only the intrinsic nature of zoning regulations but also the very narrow and specialized applicability of the so-called "exclusionary zoning" theory.

The Court of Appeals, recognizing the exclusionary nature of all zoning regulations, clearly delineated the province of the court in passing upon the validity of such regulations:

> ". . . in reviewing the reasonableness of a zoning ordinance, our inquiry does not terminate with a finding that it is for an exclusionary purpose. We must determine further whether the *exclusion* bears any rational relationship to a *legitimate state interest*. If it does not, then the zoning regulation is invalid. If, on the other hand, a legitimate state interest is furthered by the zoning regulation, we must defer to the legislative act. Being neither a super legislature nor a zoning board of appeal, a federal court is without authority to weigh and reappraise the factors considered or ignored by the legislative body in passing the challenged zoning regulation. *The reasonableness, not the wisdom, of the Petaluma Plan is at issue in this suit.*"

(Petition, App. B, at 51) (last emphasis added)

The Ninth Circuit Court of Appeals decision conflicts neither with any past decision of the Supreme Court nor with that of any other circuit. It makes no new law but rather is entirely consistent with well-established principles long ago set forth by the Court. These principles are sound and make good sense and no justification for departure from them had been demonstrated.

IV.

THE VALIDITY OF A LOCAL LAND-USE REGULATION IS NOT DETERMINED BY ITS REGIONAL EFFECT. IN ANY EVENT, THE PETALUMA PLAN IS IN FURTHERANCE OF THE GENERAL WELFARE EVEN IF MEASURED BY REGIONAL IMPACT.

Petitioners continue to assert that the validity of local land-use regulations must be determined upon the basis of their regional impact. While it is true that a local land-use regulation may have an effect upon the surrounding region, it does not follow that the constitutional validity of the regulation is determined upon that basis. The Court of Appeals clearly stated the law in this regard:

> "Although we assume that some persons desirous of living in Petaluma will be excluded under the

housing permit limitation and that, thus, the Plan may frustrate some legitimate regional housing needs, the Plan is not arbitrary or unreasonable. We agree with appellees that unlike the situation in the past most municipalities today are neither isolated nor wholly independent from neighboring municipalities and that, consequently, unilateral land use decisions by one local entity affect the needs and resources of an entire region. *See, e.g., Golden v. Planning Board of Town of Ramapo,* 30 N.Y.2d 359, 285 N.E. 2d 491, 334 N.Y.S.2d 138, *appeal dismissed,* 409 U.S. 1003 (1972); *National Land & Investment Co. v. Kohn,* 419 Pa. 504, 215 A.2d 597 (1965); Note, *Phased Zoning: Regulation of the Tempo and Sequence of Land Development,* 26 Stan. L. Rev. 585, 605 (1974). It does not necessarily follow, however, that the *due process* rights of builders and landowners are violated merely because a local entity exercises in its own self-interest the police power lawfully delegated to it by the state. *See Belle Terre,* supra; *Los Altos Hills,* supra. If the present system of delegated zoning power does not effectively serve the state interest in furthering the general welfare of the region or entire state, it is the state legislature's and not the federal courts' role to intervene and adjust the system. As stated *supra,* the federal court is not a super zoning board and should not be called on to mark the point at which legitimate local interests in promoting the welfare of the community are outweighed by legitimate regional interests. *See* Note, *supra,* at 608-11."

(Petition, App. B, at 56-57)

It is interesting to note that the Court of Appeals assumed "that some persons desirous of living in Petaluma will be excluded under the housing permit limitation." While this assumption may be legitimate, there is nothing in the record which directly supports it. There are no allegations or proof in this case that there is any shortage of housing in Petaluma or that any person seeking housing in Petaluma has been unable to find it.

Even if regional impact is adopted as part of the test to determine the validity of a local land-use regulation, it is submitted that the Petaluma Plan is in furtherance of the general welfare and therefore valid.

It is a legitimate function of the exercise of the zoning power to restrict uncontrolled growth and a local governmental entity has broad discretion in selecting the means to implement such objective. In *Belle Terre,* Mr. Justice Marshall dissented from the majority opinion but concurred with the Court's holding that the zoning power is extremely broad:

> "(L)ocal zoning authorities may properly act in furtherance of the objectives asserted to be served by the ordinance at issue here: *restricting uncontrolled growth,* solving traffic problems, keeping rental costs at a reasonable level, and making the community attractive to families. The police power which provides the justification for zoning is not narrowly confined. And, it is appropriate that we afford zoning authorities *considerable latitude in choosing the means by which to implement such purposes.*"

416 U.S. at 13-14 (emphasis added)

Any zoning measure which restricts uncontrolled growth in one community *may* have an effect on the demand for growth in another community, but uncontrolled growth in any community is inimical to the general welfare.

While different communities may select different means to accomplish the same objective, the general welfare is served where the police power test stated by the court in *Belle Terre* is met:

> "A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land-use project addressed to family needs. This goal is a permissible one within *Berman v. Parker,* supra. The police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people."

416 U.S. at 9

Moreover, virtually every modern case relied upon by petitioners to support their vague assertion that regional needs are the touchstone for review of local land use regulation, involved the exclusion from a community of a particular type of land use—whether low or moderate income housing, small lot development, apartments or mobile homes—all of which the Petaluma Plan actively encourages.

To suggest, as petitioners do here, that the proper manner of resolution of possible conflicts between regional and local needs in land use planning is the blunt instrument of constitutional law is to belie the enormous complexity of the task the federal courts are being invited to assume. Local government has no authority over regional problems, yet it is asserted that they are constitutionally mandated to solve them. Moreover, regional needs may be defined differently by different localities. Most

importantly, regions have a variety of needs, only one of which is housing, and all of which may conflict. To place the Federal courts in the position of arbiter of these conflicts is to make the courts not just a zoning board of appeals, but a legislature.

CONCLUSION

The Petaluma Plan is an effort by a relatively small community to manage its anticipated residential growth in a reasonable, well-balanced, non-chaotic manner. It is not an attempt to curtail or limit growth necessarily, but rather to provide some order to the amount of growth that could be reasonably anticipated from previous experience. The number of residential units permitted to be built annually under the Petaluma Plan is substantially the same as the average annual rate for the five year period 1967-1971. Thus the number used has a sound basis and is not an arbitrary or unreasonable figure.

It is inherent in the very concept of land use regulation that there will be an incidental effect of reducing the amount of residential construction to less than market demand (although respondents submit that petitioners have not proven this to be the case with respect to Petaluma.)

The Court of Appeals has held that the Plan is a reasonable and legitimate exercise of the City's police power and is therefore valid and constitutional. The decision of

the Court of Appeals is in accord with all authority and should stand; the petition for a writ of certiorari should be denied.

Dated, January 26, 1976.

Respectfully submitted,

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(Appendix Follows)

APPENDIX

Appendix

DEVELOPMENT POLICY.

"A. In order to protect its small town character and surrounding open space, it shall be the policy of the City to control its future rate and distribution of growth. A five-year development strategy is feasible and shall be based on the following criteria:

1. Development rate shall be tied to school and utility capacity and the balance or imbalance shall be constantly monitored and adjusted.
2. A growth rate of about 500 dwelling units anually shall be the City's growth policy.
3. The County is hereby solicited to ensure that all urban and suburban development in the vicinity of Petaluma is approved by and is acceptable for annexation to the City without exception.
4. An east-west balance shall be encouraged in considering new development.

B. It shall be the policy of the City to provide a wide choice in types of dwellings and environments consistent with Petaluma's essentially suburban character.

C. It shall be the policy of the City to ensure a permanent greenbelt of open hills and marshlands together with open space for recreation and for definition of urban form.

. . .

D. It shall be the policy of the City to protect and enhance those elements which add beauty and character to the community.

. . .

"II. Policies Affecting Residential Development

A. It shall be the policy of the City to improve subdivisions and zoning regulations and others controls over development to implement both the broad policies of growth and environmental quality and variety in residential areas.

1. Proper planning and zoning will require Environmental Design Plans, Planned Community Districts, and Planned Unit Development procedures to gain the best design possible from large-scale land development.

2. The strategy for the next five years shall be to redress the present deficiency in multi-family units in Petaluma, and the zoning ordinance will include bonus allowances to encourage better apartment design and site planning.

3. The zoning ordinance will provide for variety in densities and building types and thus, wide ranges of prices and rents. Acceptable quality shall be maintained at all levels through good site and architectural design and maximum use of available Federal subsidies, as local conditions warrant.

4. All available laws will be used to ensure that schools, parks, and greenbelts are provided as part of the residential development process.

5. Historically important structures shall be protected.

6. Petaluma will encourage the continued construction of apartments designed for families with children and pets.

7. The ordinance will provide for both mobile homes and modular housing, will distinguish between the two and avoid any tendency for manufactured units to be clustered in any one section of the City.

B. The following steps are deemed to be effective to encourage appropriate location of needed multi-family development.

1. A limited amount of high density housing will be encouraged near the Central Business District and above commercial uses.

2. Remodeling of old single-family houses to apartments in close-in areas will respect historic character of such houses and special zoning regulations will ensure that any new apartment buildings will be compatible with older structures.

3. Apartments will be encouraged on the east side as well as the west side of Petaluma to provide more variety of population and environment."

. . .

(Plaintiffs' Exhibit No. 1-5, at 31-33)

ENVIRONMENTAL DESIGN PLANS.

. . .

"Five years is a suitable time period for strategic planning. It assumes that the City should and can control its short-range future since it can foresee with reasonable assurance what its problems are and how much growth it can accommodate while maintaining an adequate level of public service and a good environment. Since 500 dwelling units annually is pretty close to the City's average during the past decade, neither the adopted policy statement nor the Environmental Design Plan actually will arrest Petaluma's growth. Nor do these plans really restrict the opportunity of private property owners to develop their land. Even without guidance from a five year Environmental Design Plan, very little subdivision activity has occurred except adjacent to existing development. As this report makes clear, it is the magnitude of the market for developed real estate in Petaluma's vicinity that drastically reduces the likelihood that any particular parcel outside the City will be developed in the next five years. *The Environmental Design Plans have the sole purpose of contributing to Petaluma's future welfare by ensuring that development in the next five years, will take place in a reasonable, orderly, attractive manner, rather than in a completely haphazard and unattractive manner*" (emphasis added)

. . .

(Plaintiffs' Exhibit No. 1-5, at 1)

HOUSING ELEMENT OF THE GENERAL PLAN.

". . . the recommended Residential Development Program is a response to the City's desire to formulate and adopt policies and plans which will orient future residential development in Petaluma in accordance to public choice. *It is, in effect, an effort to allow the City to control its growth in a manageable and environmentally conscious manner rather than simply reacting to unimpeded development.* (emphasis added)

"The Environmental Design Plans serve the purpose of providing a functional framework for the overall development of Petaluma during the next five years. The Housing Element must in turn extract guideline policies for residential construction during the period 1973-1977 . . ."

(Plaintiffs' Exhibit No. 1-8, at 18)

RESIDENTIAL DEVELOPMENT CONTROL SYSTEM.

"It is the adopted policy of the City of Petaluma to establish control over the quality, distribution, and rate of growth of the City in the interest of:

Preserving the quality of the community;

Protecting the green open-space frame of the City;

Insuring the adequacy of City facilities and services within acceptable allocation of City and school tax funds;

Insuring a balance of housing types and values in the City which will accommodate a variety of families including families of moderate income and older families on limited, fixed incomes, and

Insuring the balanced development of the City east, north, and west of the central core.

"These policies are more completely set forth in the Official Statement of Development Policy for the City of Petaluma, adopted by the City Council, Resolution No. 5760 N.C.S., June 7, 1971.

"The policies of the City are given increasingly specific form in three documents:

1. The Petaluma General Plan adopted March 5, 1962, and as subsequently amended from time to time.
2. The Petaluma Environmental Design Plans adopted March 27, 1972.
3. The Housing Element of the General Plan adopted _____.

"The General Plan establishes long-range general development policy. The Environmental Design Plan establishes medium-range and more specific and detailed development policy directed to the development period 1973-1977. The Housing Element of the General Plan defines the housing policy goals of the City and establishes a proposed Residential Development Program 1973-1977 as set forth in page 24 of the Housing Element.

"It is the purpose of this Residential Development Control System to implement the policies of the City of Petaluma as recorded in the Development Policy Resolution and the three official documents referred to above . . ."

(Plaintiffs' Exhibit No. 1-7, at 1)